

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN ASSEMBLY JUNE 24, 2013

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 726

Introduced by Senator Lara

February 22, 2013

An act to amend Section 12894 of the Government Code, relating to greenhouse gases.

LEGISLATIVE COUNSEL'S DIGEST

SB 726, as amended, Lara. California Global Warming Solutions Act of 2006: Western Climate Initiative, Incorporated.

(1) The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum, technologically feasible, and cost-effective greenhouse gas emissions reductions. Existing law also imposes conditions on the Western Climate Initiative, Incorporated, a nongovernmental entity created to assist the state board in the implementation of the act. Existing law specifies who may serve as part of the California membership of the board of directors of the Western Climate Initiative, Incorporated.

This bill, commencing January 1, 2014, would require the state board to include information on all proposed expenditures and allocations of

moneys to the Western Climate Initiative, Incorporated, in the Governor's Budget. The bill would require the ~~Western Climate Initiative, Incorporated, to annually submit a specified report to the Governor and the Legislature~~ *state board to report to the Joint Legislative Budget Committee on specified procurements proposed by the Western Climate Initiative, Incorporated.*

(2) The Bagley-Keene Open Meeting Act generally requires that all meetings of a state body be open and public. Existing law exempts the Western Climate Initiative, Incorporated, and its appointees from the Bagley-Keene Open Meeting Act when performing their duties. *The California Public Records Act requires state and local agencies to make public records available for inspection by the public, subject to specified criteria, and with specified exceptions.*

This bill would repeal that exemption and instead subject the Western Climate Initiative, Incorporated, and its appointees to the Bagley-Keene Open Meeting Act when performing their duties. *The bill would require the California membership of the Western Climate Initiative, Incorporated, to participate on the board of directors so long as the Western Climate Initiative, Incorporated, maintains a specified open meetings policy, a specified public records policy, and bylaws limiting the activities of the Western Climate Initiative, Incorporated, to the technical and operational support of the greenhouse gas emissions reduction programs of California and other jurisdictions.*

~~(3) The California Public Records Act requires state and local agencies to make public records available for inspection by the public, subject to specified criteria, and with specified exceptions.~~

~~This bill would require the Western Climate Initiative, Incorporated, and its appointees to be subject to the California Public Records Act when performing their duties.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12894 of the Government Code is
- 2 amended to read:
- 3 12894. (a) (1) The Legislature finds and declares ~~that the both~~
- 4 *of the following:*
- 5 (A) *The establishment of nongovernmental entities, such as the*
- 6 *Western Climate Initiative, Incorporated, and linkages with other*

1 states and countries by the State Air Resources Board or other state
2 agencies for the purposes of implementing Division 25.5
3 (commencing with Section 38500) of the Health and Safety Code,
4 should be done transparently and should be independently reviewed
5 by the Attorney General for consistency with all applicable laws.

6 *(B) California's participation in the Western Climate Initiative,*
7 *Incorporated, requires that its sole purpose be to provide*
8 *operational and technical support to California in its*
9 *implementation of Division 25.5 (commencing with Section 38550)*
10 *of the Health and Safety Code and to provide support to the*
11 *greenhouse gas emissions reduction programs of other*
12 *jurisdictions. Given its limited scope of activities, the Western*
13 *Climate Initiative, Incorporated, does not have the authority to*
14 *create policy with respect to any existing or future program or*
15 *regulation undertaken pursuant to Division 25.5 (commencing*
16 *with Section 38550) of the Health and Safety Code.*

17 (2) The purpose of this section is to establish new oversight and
18 transparency over ~~any such linkages~~ *the Western Climate Initiative,*
19 *Incorporated,* and related activities undertaken in relation to
20 Division 25.5 (commencing with Section 38500) of the Health and
21 Safety Code by the executive agencies in order to ensure
22 consistency with applicable laws.

23 (b) The California membership of the ~~Board of Directors~~ *board*
24 *of directors* of the Western Climate Initiative, Incorporated, shall
25 be modified as follows:

26 (1) One appointee or his or her designee who shall serve as an
27 ex officio nonvoting member shall be appointed by the Senate
28 Committee on Rules.

29 (2) One appointee or his or her designee who shall serve as an
30 ex officio nonvoting member shall be appointed by the Speaker
31 of the Assembly.

32 (3) The Chairperson of the State Air Resources Board or her or
33 his designee.

34 (4) The Secretary for Environmental Protection or his or her
35 designee.

36 *(c) The California membership of the board of directors of the*
37 *Western Climate Initiative, Incorporated, shall participate on the*
38 *board so long as the Western Climate Initiative, Incorporated,*
39 *maintains policies and bylaws according to all of the following:*

1 (1) *An open meetings policy that is and remains consistent with*
2 *the general policies of the Bagley-Keene Open Meeting Act (Article*
3 *9 (commencing with Section 11120) of Chapter 1 of Part 1) and*
4 *affords the public the greatest possible access consistent with the*
5 *other duties of the Western Climate Initiative, Incorporated.*

6 (2) *A records availability policy that is and remains consistent*
7 *with the general policies of the California Public Records Act*
8 *(Chapter 3.5 (commencing with Section 6250) of Division 7 of*
9 *Title 1) and affords the public access to corporate records*
10 *consistent with the operating needs and other duties of the Western*
11 *Climate Initiative, Incorporated, and all applicable legal privileges.*

12 (3) *Bylaws that limit the activities of the Western Climate*
13 *Initiative, Incorporated, to the technical and operational support*
14 *of the greenhouse gas emissions reduction programs of California*
15 *and other jurisdictions. These bylaws shall not allow the Western*
16 *Climate Initiative, Incorporated, to have policymaking authority*
17 *with respect to these programs.*

18 ~~(e)~~

19 (d) *The State Air Resources Board shall provide notice to the*
20 *Joint Legislative Budget Committee, consistent with that required*
21 *for Department of Finance augmentation or reduction*
22 *authorizations pursuant to subdivision (e) of Section 28.00 of the*
23 *annual Budget Act, of any Committee for both of the following:*

24 (1) *Any funds over one hundred fifty thousand dollars (\$150,000)*
25 *provided to the Western Climate Initiative, Incorporated, or its*
26 *derivatives or subcontractors no later than 30 days prior to transfer*
27 *or expenditure of these funds.*

28 (2) *All procurements over one hundred fifty thousand dollars*
29 *(\$150,000) proposed by the Western Climate Initiative,*
30 *Incorporated, that are expected to result in a contract no later*
31 *than 30 days prior to the execution of those contracts.*

32 ~~(d)-(1)-~~

33 (e) *The Chairperson of the State Air Resources Board and the*
34 *Secretary for Environmental Protection, as the California voting*
35 *representatives on the Western Climate Initiative, Incorporated,*
36 *shall report every six months to the Joint Legislative Budget*
37 *Committee on any actions proposed by the Western Climate*
38 *Initiative, Incorporated, that affect California state government or*
39 *entities located within the state.*

1 ~~(2) The Western Climate Initiative, Incorporated, shall annually~~
2 ~~submit a report to the Governor and the appropriate committees~~
3 ~~of the Legislature that includes all of the following:~~

4 ~~(A) Emissions reductions achieved pursuant to the Western~~
5 ~~Climate Initiative.~~

6 ~~(B) General plans to foster relationships with other localities,~~
7 ~~states, and nations in order to reduce greenhouse gas emissions in~~
8 ~~California.~~

9 ~~(3) A report submitted pursuant to this subdivision shall be~~
10 ~~submitted in compliance with Section 9795 of the Government~~
11 ~~Code.~~

12 ~~(e)~~

13 ~~(f) For purposes of this section, “link,” “linkage,” or “linking”~~
14 ~~means an action taken by the State Air Resources Board or any~~
15 ~~other state agency that will result in acceptance by the State of~~
16 ~~California of compliance instruments issued by any other~~
17 ~~governmental agency, including any state, province, or country,~~
18 ~~for purposes of demonstrating compliance with the market-based~~
19 ~~compliance mechanism established pursuant to Division 25.5~~
20 ~~(commencing with Section 38500) of the Health and Safety Code~~
21 ~~and specified in Sections 95801 to 96022, inclusive, of Title 17 of~~
22 ~~the California Code of Regulations.~~

23 ~~(f)~~

24 ~~(g) A state agency, including, but not limited to, the State Air~~
25 ~~Resources Board, shall not link a market-based compliance~~
26 ~~mechanism established pursuant to Division 25.5 (commencing~~
27 ~~with Section 38500) of the Health and Safety Code and specified~~
28 ~~in Sections 95801 to 96022, inclusive, of Title 17 of the California~~
29 ~~Code of Regulations with any other state, province, or country~~
30 ~~unless the state agency notifies the Governor that the agency~~
31 ~~intends to take such action and the Governor, acting in his or her~~
32 ~~independent capacity, makes all of the following findings:~~

33 ~~(1) The jurisdiction with which the state agency proposes to~~
34 ~~link has adopted program requirements for greenhouse gas~~
35 ~~reductions, including, but not limited to, requirements for offsets,~~
36 ~~that are equivalent to or stricter than those required by Division~~
37 ~~25.5 (commencing with Section 38500) of the Health and Safety~~
38 ~~Code.~~

39 ~~(2) Under the proposed linkage, the State of California is able~~
40 ~~to enforce Division 25.5 (commencing with Section 38500) of the~~

1 Health and Safety Code and related statutes, against any entity
2 subject to regulation under those statutes, and against any entity
3 located within the linking jurisdiction to the maximum extent
4 permitted under the United States and California Constitutions.

5 (3) The proposed linkage provides for enforcement of applicable
6 laws by the state agency or by the linking jurisdiction of program
7 requirements that are equivalent to or stricter than those required
8 by Division 25.5 (commencing with Section 38500) of the Health
9 and Safety Code.

10 (4) The proposed linkage and any related participation of the
11 State of California in the Western Climate Initiative, Incorporated,
12 shall not impose any significant liability on the state or any state
13 agency for any failure associated with the linkage.

14 ~~(g)~~

15 ~~(h)~~ The Governor shall issue findings pursuant to subdivision
16 ~~(f)~~ ~~(g)~~ within 45 days of receiving a notice from a state agency,
17 and shall provide those findings to the Legislature. The findings
18 shall consider the advice of the Attorney General. The findings to
19 be submitted to the Legislature shall not be unreasonably withheld.
20 The findings shall not be subject to judicial review.

21 ~~(h) The Bagley-Keene Open Meeting Act (Article 9~~
22 ~~(commencing with Section 11120) of Chapter 1 of Part 1) and the~~
23 ~~California Public Records Act (Chapter 3.5 (commencing with~~
24 ~~Section 6250) of Division 7 of Title 1) shall apply to the Western~~
25 ~~Climate Initiative, Incorporated, and to appointees specified in~~
26 ~~subdivision (b) when performing their duties under this section.~~

27 (i) Commencing January 1, 2014, the State Air Resources Board
28 shall include information on all proposed expenditures and
29 allocations of moneys to the Western Climate Initiative,
30 Incorporated, in the Governor's Budget.